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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,282	07/22/2003	Frederick G. Payne	54593-2	7900

23994 7590 05/03/2005

JOSEPH W MOTT
JENNINGS STROUSS & SALMON PLC
201 EAST WASHINGTON STREET
11TH FLOOR
PHOENIX, AZ 85004-2385

EXAMINER

KATCHEVES, BASIL S

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 05/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/625,282	Applicant(s) PAYNE, FREDERICK G.	
	Examiner Basil Katcheves	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 10-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 10-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant has cancelled claims 6-9 and added new claims 10-12. Pending claims 1-5 and 10-12 are examined below.

Claim Rejections - 35 USC § 102

Claims 1-4, 8 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,913,780 to Goergen.

Regarding claim 1, Goergen discloses a method of repelling birds by placing a repelling device (fig. 2: 30) in positions where birds roost (fig. 2: L). Goergen discloses a slick outer surface (fig. 1: 4) mounted at an angle that inhibits the standing of birds. Goergen also discloses a plurality of angled slide surfaces (fig. 4: f & 30)

Regarding claim 2, Goergen discloses the device as being a polyhedron with a plurality of exposed surfaces (fig. 4: F, 30) affixed on a roosting zone (L).

Regarding claim 3, Goergen discloses the device as having the shape of a triangular prism (fig. 2: 30).

Regarding claim 4, Goergen discloses the device as having the shape of a pyramid (fig. 1: 3).

Regarding claim 10, Goergen discloses the shape of a partial pyramid (fig. 1: see one of right or left section 3).

Regarding claim 11, claim 11 is rejected for reasons cited in the rejection of claim 1. In addition, Goergen discloses the sheet as following a slope of a roof (fig. 1: 1 & 2).

Claim Rejections - 35 USC § 103

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,913,780 to Goergen in view of U.S. Patent No. 5,291,707 to McDonald.

Regarding claim 5, Goergen discloses the side of the deterrent affixed to the roosting zone as being partially open (fig. 2: 5), but does not disclose the bird deterrent as having the shape of an inverted "V". McDonald discloses a bird deterrent having an inverted "V" shape (fig. 3: 22). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Goergen by adding an inverted "V" shape to the bird deterrent, as disclosed by McDonald, in order to better prevent the birds from coming in contact with the flat portions of the deterrent.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,913,780 to Goergen in view of U.S. Patent No. 6,546,676 to Wiesener et al.

Regarding claim 12, Goergen discloses the device as meeting the roosting zone (fig. 2: see device 30 mounted to zone L) and the use of an adhesive (abstract). However, Goergen does not disclose the adhesive as being made of silicone and applied along a periphery. Wiesener discloses a bird repelling device secured to a structure through the use of a silicone adhesive (column 3, lines 14-16). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Goergen by using silicone adhesive, as disclosed by Wiesener, along the periphery of the device in order to create a weather resistant seal in order to prevent

water from entering the underside of the device similar to the manner of which bath tubs, sinks, etc are caulked along their peripheries.

Response to Arguments

Applicant's arguments filed 2/7/05 have been fully considered but they are not persuasive. Applicant argues that the prior art (Goergen) does not disclose a device that imposes a plurality of angled surfaces to deter birds. However, applicant must note that Goergen discloses an exposed surface (fig. 4) which contains various angles capable of being exposed to bird activity. Regardless of what material is used to create this multi angled surface, the structural limitations of the application are met. Applicant states the strip F of Goergen is angled at 45 degrees. This clearly shows a plurality of angles, as claim 1 and 4 of the application. This meets the structural limitations of the application and therefore, may function in the same manner. Applicant argues that the prior art does not form a cap on a roosting zone. A roosting zone is any place that two birds may congregate. A cap is a cover. The ledge (2) of Goergen may provide adequate space for roosting, and the deterrent of Goergen caps that ledge. Regarding Goergen disclosing the shape of a pyramid, the applicant is claiming the invention as having the shape of pyramid and a triangular prism. The only way for this to be possible is as Goergen shows in the drawings of fig. 1 showing a pyramid type shape, and fig. 2 showing a triangular prism type shape. Applicant's structural limitations of the pyramid shape do not list any orientation or dimension and, therefore, are met by the view of fig. 1. Applicant argues that the application follows the slope of the roof. However,

applicant should note that the roof is not claimed and there are no structural limitations to the roof slope. Goergen discloses a surface having a right angled slope, and a bird deterrent that follows across this slope. Goergen shows bottom and side sections which are parallel with the slope, and also shows a diagonal side extending between walls, each of these meeting the claim limitations, as following the roof slope of the application is not described. Applicant argues the combination to use caulking. However, caulking is demonstrated by the prior art and is commonly used to seal peripheries of a variety of objects exposed to moisture.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Basil Katcheves whose telephone number is

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(571) 272-6846. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman, can be reached at (571) 272-6842.

BK *rk*

4/28/05

A handwritten signature in black ink, appearing to read "Brian E. Glessner", with a long horizontal flourish extending to the right.

**BRIAN E. GLESSNER
PRIMARY EXAMINER**